

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No.: PO-12-4001-JPH
)
Plaintiff,) MEMORANDUM DECISION FOLLOWING
vs.) TRIAL
)
SHAWN S. PARKER,)
Defendant.)
)
)
)

BACKGROUND

The Court held a bench trial on June 14, 2012. The United States was represented by AUSA Tyler Tornabene and USA intern Megan Mignella. The United States dismissed Count 4 of the Information and presented its case in chief, consisting of the testimony of Forest Service Officer Steve Roberson, and five admitted exhibits. Defendant is charged in Counts 1, 3 and 5 with selling or offering for sale any merchandise, or conducting any kind of work activity or service on National Forest Land not authorized by federal law, regulation, or special use permit in violation of 36 C.F.R. s. 261.10(c). Defendant is charged in Count 2 with threatening, resisting, intimidating, or interfering with a forest service officer engaged in the performance of his official duties in the protection or administration of National Forest Land in violation of 36 C.F.R. s. 261.3(a)

1 The Defendant was represented by Kraig Gardner. The
2 Defendant did not call any witnesses but offered "Exhibit A" in
3 evidence. The United States objected to the admission of Exhibit
4 A on the grounds of relevance and the late submission of the
5 offered exhibit. The Court deferred ruling on the admissibility
6 of Exhibit A pending further briefing. At the conclusion of the
7 evidence, the parties stipulated to submit closing arguments in
8 writing. The Court has read the closing arguments and
9 Defendant's Reply brief and is fully informed.

10 EVIDENCE

11 FSO Roberson testified that he had been employed by the
12 U.S. Forest Service since June, 1973 and had retired on June 6,
13 2012. He underwent forest protection training in 1980 and
14 Federal law enforcement training in 1990 and had been employed
15 for many years as a Forest Service Officer in the Cle Elum
16 Ranger District in the Okanogan Wenatchee National Forest. He
17 regularly patrolled the Cle Elum Ranger District since 1973 and
18 is familiar with the boundaries of the Okanogan Wenatchee
19 National Forest. He testified that all the events in question
20 occurred within the boundaries of the National Forest as shown
21 on the map, produced by the Forest Service, admitted in evidence
22 as Ex. 1. FSO Roberson testified that he has known the Defendant
23 for 15 years and was able to identify him in court. He also knew
24 that the Defendant owns and operates a business known as Cascade
25 Playtime Rentals in the Lake Cle Elum area which business rents
26 winter recreational equipment to the public. He testified that
27

1 he knew the Cascade Playtime logo and address and that he had
2 accessed the business web page. He testified the Defendant
3 advertised rentals of snowmobiles at between \$100-\$250.

4 FSO Roberson also testified that he was routinely required
5 as part of his duties to patrol the area to determine if persons
6 using the National Forest had any necessary special use permits.
7 He said that the special use permit must be on the person of the
8 individual who applied for it and to whom it was issued. He
9 testified that the Forest Service maintained a register of
10 persons who had received special use permits and that he was
11 regularly apprised of events occurring in the National Forest
12 that would require special use permits. He testified that the
13 special use permit coordinator at the Forest Service did a
14 specific search to see whether the Defendant had a special use
15 permit for the events in question. He knew from previous
16 contacts with Defendant that Defendant did not have a special
17 use permit. Defendant had been cited previous to the dates in
18 question by the Forest Service for violations of the same
19 regulation pertaining to Defendant's business.

20 Snowmobiles often use groomed trails adjacent to the Salmon
21 la Sac highway for recreational purposes. FSO Roberson testified
22 that the events occurring on February 2 and 3, 2011 occurred
23 north of the Cooper River junction but south of F.S. Road 4315
24 at approximately mile post 8.5. The events described in the
25 evidence on 12/15/2011 occurred at the Cooper River junction.

1 FSO Roberson testified that in December 1999 he applied for
2 permission from the Forest Service to work in his off duty hours
3 for a company named Boulder Creek Enterprises. His job entails
4 operating a snow cat grooming snowmobile trails on Saturday
5 nights. Boulder Creek Enterprises is operated by Don May, a
6 friend of FSO Roberson. Since 2010, Boulder Creek has rented
7 snowmobiles in the area in competition with the Defendant's
8 business. FSO Roberson testified that while he did not
9 specifically advise the Forest Service of the snowmobile rental
10 business of Boulder Creek Enterprises beginning in 2010, he did
11 not believe there was a conflict of interest in working for them
12 since he had nothing to do with Don May's rental business.

13
14 February 2, 2011- Counts 1 and 2

15 On this date, FSO Roberson was patrolling alone,
16 southbound, on the Salmon la Sac highway (Forest Service Road
17 4300) during daylight hours in the Cle Elum drainage area within
18 the Okanogan Wenatchee National Forest. He was wearing full duty
19 gear and driving a green, marked Forest Service vehicle. He
20 observed Defendant's trucks, trailers and snowmobile equipment
21 parked in the northbound lane on the highway. See Ex. 2 and 3.
22 He saw the Defendant speaking with other people, dressed in
23 snowmobile clothing, on the side of the road. He counted 14
24 snowmobiles and approximately 12 people in the group.

25 Upon contacting the Defendant, FSO Roberson advised
26 the Defendant that as they had discussed many times, he did not
27

1 have a special use permit. He told the Defendant he was in
2 violation and to turn his equipment around, apparently to return
3 to the rental shop. He said the Defendant refused to do so,
4 refused to give identification (even though FSO Roberson knew
5 him) and told FSO Roberson "They had rented and paid for them;
6 they were going to ride and he'd (the Defendant) take the
7 ticket." FSO Roberson did not arrest the Defendant believing the
8 Defendant was extremely hostile and he was working alone. He
9 testified that the Defendant spoke freely and was not under the
10 influence of drugs or alcohol. He observed 12 of the snowmobiles
11 were off loaded from the trailers onto the east side of the
12 highway and driven away, northbound, by the group including
13 Defendant. On checking, FSO Roberson found that the remaining
14 snowmobiles on the trailer were registered to the Defendant's
15 business and did not have current vehicle registration. FSO
16 Roberson went back to the Defendant's place of business and
17 waited for the Defendant, but he did not return there.

18
19 February 3, 2011- Count 3

20 On this date, FSO Roberson was again patrolling alone but
21 was not in his designated Forest Service vehicle. He observed
22 the same two vehicles belonging to the Defendant travelling
23 north on the Salmon la Sac highway in the same approximate
24 location as the day before. He saw the Defendant accompanying
25 the business vehicles in his own personal vehicle, a Toyota FJ.
26 As he approached the Defendant's vehicles, he saw the
27

1 snowmobiles ride north further into the National Forest. The
2 Defendant did not accompany the snowmobiles as he had the day
3 previous. The Defendant returned south towards Cle Elum. FSO
4 Roberson did not see the Defendant unload the snowmobiles from
5 the trailers on this occasion. He did not have contact with the
6 Defendant that day. There was no testimony about how many
7 snowmobiles were present, how many riders were present or
8 whether the witness knew if the snowmobiles belonged to the
9 Defendant and/or were rented from Cascade Playtime Rentals that
10 day.

11
12 December 15, 2011- Count 5

13 On this date (which was the snowmobiling season after that
14 referenced in Counts 1,2 and 3), FSO Roberson was again
15 patrolling along the Salmon la Sac highway near the Cooper River
16 junction. He observed a truck from Cascade Playtime Rentals
17 along side the highway. Exs. 4 and 5. He pulled into a turn
18 around and saw the Defendant talking with a large group of about
19 15 people alongside a like number of snowmobiles. He testified
20 that the Defendant made eye contact with him, immediately pulled
21 on his helmet and led all but two of the group further into the
22 National Forest on snowmobiles before Roberson could make
23 contact. He testified that the group then travelled on Forest
24 Service Road 4600 (Cooper Lake Road) and that at no time did
25 Defendant display a special use permit to him.

LEGAL ISSUES

A. Did the United States meet its burden of proof as to whether Defendant had rented the snowmobiles to others in furtherance of his business on the dates in question AND whether Defendant did not have a special use permit allowing him to conduct his business on National Forest Service land?

There was limited testimony from FSO Roberson as to whether the other persons on snowmobiles on the dates in question had rented them from the Defendant. However, the circumstances of each contact, coupled with Roberson's past knowledge of the Defendant, would allow the Court, as the trier of fact, to draw the inference that Defendant had rented the snowmobiles to the persons accompanying him. The snowmobiles were registered to the Defendant. The vehicles transporting the snowmobiles were used in Defendant's business. On February 2, the Defendant made spontaneous statements that they had "rented them and were going to ride" and he would "take the ticket" knowing he was in violation of the law requiring a special use permit in order to conduct his business. Defendant appeared to be instructing or guiding two of the trips personally on February 2, 2011 and December 15, 2011 and drove the snowmobiles to the site where they were off loaded from the trailers. Additionally, the Defendant and a group of his customers rode the snowmobiles on Forest Service Road 4600 on December 15, 2011, in addition to operating them within the easement described in Ex. A.

1 Defendant argues that the Court should not have admitted
2 FSO Roberson's testimony that Defendant did not have a special
3 use permit under ER 803(10). That rule states:

4 To prove the absence of a record, report, statement, or
5 data compilation, in any form, or the nonoccurrence or
6 nonexistence of a matter of which a record, report, statement,
7 or data compilation, in any form, was regularly made and
8 preserved by a public office or agency, evidence in the form of
9 a certification in accordance with rule 902, or testimony, that
10 diligent search failed to disclose the record, report,
11 statement, or data compilation, or entry.

12 ER 803(10).

13 Here, FSO Roberson testified that the Forest Service's
14 special use permit coordinator kept the records of such permits
15 current, accurate and complete. He said the coordinator did a
16 specific search to see whether the Defendant had a permit. He
17 testified he knew from his past contacts with Defendant that he
18 had no permit. During each of the three incidents, Defendant
19 never tried to display a special use permit to FSO Roberson and
20 in fact appeared to flee from the scene before he could be
21 contacted regarding a special use permit on at least one
22 occasion.

23 As to Counts 1 and 5, the Court FINDS that the United
24 States has met its burden with regard to the elements of proving
25 that the Defendant was engaged in selling or offering for sale
26 any merchandise or conducting any kind of work activity or
27

1 service not authorized by federal law, regulation, or special
2 use authorization. The Court further FINDS that the activities
3 of the Defendant occurred within the boundaries of the Okanogan-
4 Wenatchee National Forest, Cle Elum Ranger District.

5 As to Count 3, the Court FINDS that the United States has
6 not met its burden to establish the element of proving that the
7 Defendant was engaged in selling or offering for sale any
8 merchandise or conducting any kind of work activity or service.
9 There is an absence of specific evidence and that lack of
10 evidence does not permit the Court to draw the inferences
11 necessary to find the Defendant guilty of the violation charged
12 in Count 3. Count 3 is therefore **DISMISSED WITH PREJUDICE.**

13
14 **B. Did the United States meet its burden of proof with**
15 **regard to the charge of proving that the Defendant**
16 **threatened, resisted, intimidated, or interfered with**
17 **a forest officer engaged in the performance of his**
18 **official duties in the protection or administration of**
19 **National Forest Land?**

20 The Ninth Circuit has held that under 36 C.F.R. § 261.3(a),
21 "interference" means to "oppose, intervene, hinder, or prevent."
22 United States v. Willfong, 274 F.3d 1297, 1301 (2001).

23 In order to establish a violation of 36 C.F.R. § 261.3(a),
24 the United States must prove the following elements beyond a
25 reasonable doubt: (1) that the Defendant did interfere; (2) with
26 a forest service officer; (3) engaged in the performance of his
27 official duties in the protection or administration of National
Forest Land.

1 1. The Defendant did interfere.

2 On February 2, 2011, the Defendant continued to conduct his
3 rental business and ignored FSO Roberson's attempts to stop it.
4 The Defendant affirmatively refused to obey Officer Roberson's
5 orders, and therefore interfered with the forest officer's
6 ability to enforce the law. Defendant's conduct toward FSO
7 Roberson was described as "extremely hostile". It is undisputed
8 that Defendant took his group of renters into the National
9 Forest after the confrontation, thus thwarting FSO Roberson's
10 demands to cease his activity. Additionally, because the
11 Defendant failed to produce his identification at the request of
12 a forest service officer, he interfered with the forest service
13 officer's ability to enforce the law and protect National Forest
14 Land.

15 2. With a forest service officer.

16 The United States demonstrated that on February 2, 2011,
17 Officer Roberson was employed by the United States Forest
18 Service.

19 3. Engaged in the performance of his official duties in the
20 protection or administration of National Forest Land.

21 The United States has shown that on February 2, 2011,
22 Officer Roberson was engaged in official duties as a law
23 enforcement officer of the United States Forest Service. He was
24 on duty, and performing an act that contributes to the
25 protection, improvement, or administration of National Forest
26 Land.

1 As to Count 2, the Court FINDS that the United States has
2 met its burden with regard to the elements of proving that the
3 Defendant threatened, resisted, intimidated, or interfered with
4 a forest officer engaged in the performance of his official
5 duties in the protection or administration of National Forest
6 Land.

7 **C. Admissibility of Exhibit "A"**

8 Ex. A was offered into evidence as a self-authenticating
9 certified copy of a public record under ER 902. It is not
10 disputed by the United States that Ex. A applies to the Salmon
11 la Sac highway in the area where the events occurred.

12 Ex. A was furnished to the United States after the deadline
13 established by the Court's pre-trial order for close of
14 discovery. However, the document is relevant and, since the
15 issue of jurisdiction may be raised at any time, it appears to
16 the Court that Ex. A should be admitted into evidence and
17 considered by the Court. Ex. A is therefore ADMITTED.

18 **D. Jurisdictional Issue**

19 Defendant summarizes the issue as follows:

20 The overarching issue is whether 36 CFR § 261.1 requires a
21 finding that the actions taken by Mr. Parker in this case are
22 not within the scope of the prohibitions of that section. The
23 defense asserts that this is a jurisdictional issue. As it
24 relates to the counts of the information at trial, it would
25 require dismissal and/or findings of not guilty on counts 1, 2,
26 and 3. Defendant's Closing Brief (ECF 50).
27

1 Essentially, Defendant contends that the United States
2 Forest Service does not have jurisdiction over Salmon la Sac
3 road because it is a Kittitas County road subject to an easement
4 and right of way for "public road purposes" as reflected in Ex.
5 "A".

6 Defendant's argument is twofold; **first** that the Salmon la
7 Sac highway is exclusively conveyed (via Ex. A) to the public
8 for "public road purposes" and is not subject to regulation by
9 any other governmental entity and, **second**, that even if the
10 Forest Service has concurrent or other jurisdiction over the
11 road to enforce Forest Service regulations there is no showing
12 that jurisdiction is appropriate for the protection of Federal
13 property under the facts of this case.

14 An analysis of Ex. A is somewhat instructive
15 notwithstanding the lack of testimony regarding its creation or
16 intent. The Court observes that it was filed for record in July,
17 1992, by a private landowner (Plum Creek Timber Company) in
18 favor of Kittitas County. The Court takes judicial notice that
19 this is well past the date when the Salmon la Sac highway began
20 its actual path through the National Forest since the Court
21 drove on the road many times in juvenile delight in the 1960s.
22 The Court is skeptical of the assertion that Ex. A authorized,
23 created or established a public right of way in the Salmon la
24 Sac highway for the very first time and thus deprived the Forest
25 Service of any jurisdiction within that easement. Of
26 significance, the Easement does not purport to create any
27

1 exclusive rights in Kittitas County to the highway. Further, the
2 Easement addresses additional development by the landowner
3 (development of eight approaches for future access to Grantor's
4 land) and it reserves to Kittitas County alone the option to
5 "extend rights and privileges for use of the premises to other
6 governmental agencies..."). The Court concludes that Ex. A was
7 intended to moderate or equalize the burdens between a private
8 landowner and the County in utilization or development of
9 surrounding property, but was never intended to deprive any
10 other governmental agency of the ability or jurisdiction to
11 regulate conduct on the highway or within its described
12 easement.

13 Defendant argues that Salmon la Sac road is not a National
14 Forest System Road by definition in 36 CFR 261.2 as stated in
15 pertinent part:

16 National Forest System road. A forest road **other than a**
17 **road which has been authorized by a legally documented right-of-**
18 **way held by a State, county, or other local public road**
19 **authority.**

20 36 CFR 261.2 (emphasis added)

21 Defendant concludes that although there is no dispositive
22 case law on the issue, legislative history instructs that the
23 events charged in Counts 1,2, and 3 must be dismissed because
24 the Forest Service does not have jurisdiction over the lands
25 subject to the public right of way where the events occurred.
26
27

1 The Ninth Circuit has held that the sole existence of a
2 right of way does not completely remove the Forest Service's
3 jurisdiction and enforcement authority. See Adams v. United
4 States, 3 F.3d 1254 (9th Cir. 1993); see also Adams v. United
5 States, 255 F.3d 787 (9th Cir. 2001) (second appeal). Of note,
6 the Adams cases hold that to the extent that the general public
7 can make use of a road, the defendants could also do. But where
8 the use made of the road goes beyond the uses by the general
9 public, then a special use permit is required. Here, the Court
10 finds that commercial or work activity, which is done by the
11 delivery of multiple customers and snowmobiles to National
12 Forest land at the side of the Salmon la Sac highway, goes
13 beyond the use of the road by the general public.

14 While defendant may be correct, in a definitional sense,
15 that Salmon la Sac county road is not a "National Forest System
16 road," there is ample authority supporting the Forest Service's
17 jurisdiction to enforce its regulations in this case.

18 The 9th Circuit has interpreted 16 USC § 551 ("Protection
19 of national forests, rules and regulations"; the basis of the
20 regulations alleged to have been violated - 36 CFR 261.10(c) &
21 36 CFR 261.3(a)) as conferring broad and concurrent federal
22 jurisdiction to regulate activities that affect the national
23 forests, even when the conduct occurs on non-federal land.

24 16 USC § 551 holds, in relevant part, that "The Secretary
25 of Agriculture shall make provisions for the protection against
26 destruction by fire and depredations upon the public forests and
27

1 national ... and he may make such rules and regulations and
 2 establish such service as will insure the objects of such
 3 reservations, namely, to regulate their occupancy and use and to
 4 preserve the forests thereon from destruction."

5 This power is subject to individual state legislative
 6 approval. Washington State enacted what is now RCW 37.08.220
 7 which provides that Washington consents to the federal
 8 acquisition and management of national forest lands, and that
 9 "Washington shall retain concurrent jurisdiction with the United
 10 States in and over lands so acquired..."

11 The 9th Circuit has interpreted that § 551, as applied to
 12 36 CFR 261.10 & 261.3, confers broad federal jurisdiction over
 13 activities that *affect* national forests. US v. Lindsey, 595 F.2d
 14 5 (9th Cir. 1979) (as discussed/cited in US v. Arbo, 691 F.2d
 15 862, 865 (9th Cir. 1982):

16
 17 "In United States v. Lindsey, 595 F.2d 5 (9th Cir.
 18 1979), the defendant was charged with violating
 19 regulations issued by the Secretary of Agriculture
 20 regarding camping and building a fire without permits.
 21 These regulations, as the ones in the instant case,
 22 were issued pursuant to 16 U.S.C. s 551 respecting the
 23 National Forest System. Id. at 6 n. 1. **We held that**
 24 **even though the State of Idaho held title to the land**
 25 **on which the violations occurred, such ownership did**
 26 **not deprive the United States of regulatory control**
 27 **over the defendant's conduct.** In discussing the scope
 of Congress' regulatory authority **under the property**
clause, U.S. Const. art. IV, s 3, cl. 2, we stated
 that "(i)t is well established that this clause grants
 to the United States power to regulate conduct on non-
 federal land when reasonably necessary to protect
 adjacent federal property or navigable waters." Id. at
 6. In Kleppe v. New Mexico, 426 U.S. 529, 538, 96
 S.Ct. 2285, 2291, 49 L.Ed.2d 34 (1976), the Court
 observed that the "power granted by the Property
 Clause is broad enough to reach beyond territorial

limits." Thus, in this case we need not reach the issue of whether the incident in question occurred on state rather than federal land, **but rather decide it based upon whether the government agents' actions in confronting Arbo were "reasonably necessary to protect adjacent federal property."**

We conclude that the officers' compliance inspection was reasonably necessary to ensure that practices on Arbo's claim did not pose a fire or health risk to adjacent federal land, regardless of whether the claim was on state land. Thus, under Lindsey, Arbo's interference with the officers is not beyond the jurisdiction of the United States."

The Court notes that Arbo was charged with the same offense as Defendant here, a violation of CFR 261.3(a), interfering with a forest officer.

Also see United States v. Scotford, 302 F. App'x 561, 563 (9th Cir. 2008) (unpublished):

"For purposes of 36 C.F.R. § 261.3(a), a forest officer is performing an 'official duty' when the officer is on duty and performing an act that contributes to the protection, improvement, or administration of the National Forest." United States v. Willfong, 274 F.3d 1297, 1300 (9th Cir.2001) (citing United States v. Ryberg, 43 F.3d 1332, 1334 (9th Cir.1995)).

Actions taken on non-federal land contribute to the protection of the National Forest when they are "reasonably necessary to protect adjacent federal property." United States v. Arbo, 691 F.2d 862, 865 (9th Cir.1982) (quoting United States v. Lindsey, 595 F.2d 5, 6 (9th Cir.1979)).

Officer Thompson's actions were reasonably necessary to protect adjacent federal forest. He was patrolling near an area closed to vehicle traffic to protect an endangered plant species and the deer migration. He had previously seen Scotford's snowmobile on the boundaries of the closed area, and had once cited him for snowmobiling in the closed area. Thus, trying to make contact with Scotford to ensure he knew of the area's closure "contributed to the protection improvement, or administration of the National

1 Forest," even though Scotford was not then on federal
2 land.

3 The evidence supporting Scotford's conviction for
4 violating 36 CFR § 261.10(m) also supports his
5 conviction for violating 36 C.F.R. § 261.3(a). In
6 Willfong, we held that the failure to obey a forest
7 service officer's order constituted "interference"
8 under 36 C.F.R. § 261.3(a). 274 F.3d at 1301. Thus,
9 given that Scotford failed to obey Officer Thompson's
10 orders, the magistrate judge rationally found that he
11 violated 36 C.F.R. § 261.3(a)."

12 Defendant also argues that although there are circumstances
13 where Congress may have jurisdiction over non-federal land, the
14 facts in this case do not avail themselves of that jurisdiction
15 because the charges brought are not in the nature of protecting
16 Federal property. That is, the fact that Defendant operated his
17 snowmobile rental business in close proximity to the National
18 Forest did not threaten the Federal land or habitat such as
19 building a camp fire near a dry forest may have done.

20 Defendant cites United States v. Brown, 200 F3d. 710 (10th
21 Cir. 1999) for the proposition that it is the **actual use** of
22 Forest Service land that triggers the need for a special use
23 permit. He argues that no special use permit would be needed for
24 him, for example, to rent snowmobiles to individuals in Seattle
25 and, without assistance from him, those individuals would then
26 be allowed to transport those snowmobiles to the Cle Elum Ranger
27 District and operate them in the National Forest.

28 Setting aside for a moment the facts the Court has found
29 regarding Count 5 (that the Defendant and several of his
30 customers operated the snowmobiles on Forest Service Road 4600
31

1 in addition to his operations purportedly within the easement),
2 the Defendant's last argument does not stand close scrutiny.
3 First of all, it is contrary to law to say that unless the
4 activity occurs on Forest Service land, that activity cannot be
5 subjected to regulation by the Forest Service. Lindsey, *supra*,
6 and the cases following are clear that the locus of the activity
7 is not necessarily dispositive. A fire set on state land or
8 local land may still present a hazard to adjacent Federal land.

9 Specific to the charges here pursuant to 36 CFR §
10 261.10(c), the Court can imagine scenarios where use of a
11 commercially rented snowmobile adjacent to Federal land can
12 create problems within the National Forest. Renting snowmobiles
13 to multiple individuals untrained or inexperienced in their
14 operation might cause fire, safety or environmental hazards
15 within the National Forest even though the owner/operator of the
16 rental business did not do more than unload the snowmobiles in
17 the adjacent roadway or easement. Clearly, the promise and
18 enticement of the Defendant's commercial venture is to allow the
19 public to ride within the National Forest. And the
20 owner/operator can make a profit from that activity if he or she
21 has a special use permit to balance the commercial effort with
22 the public needs for a safe and environmentally sound ride.

23 The Salmon la Sac highway is also designated as Forest
24 Service Road 4300. The highway runs through the Okanogan
25 Wenatchee National Forest. The location of the events described
26 in the evidence is entirely surrounded by National Forest. The
27

1 language found in United States v. Brown, supra, at pages 713-
2 714 seems apposite here as well:

3 "[if] an interpretation of the regulation were...as
4 restrictive as the defendant urges, the entire purpose of the
5 regulation would be defeated. An individual could bypass all the
6 requirements that are part of a special use permit simply by
7 storing his equipment outside the Forest Service boundaries and
8 hauling them on the Forest Service after the negotiations had
9 been completed."

10 The Court finds that the same rationale applies here.
11 Whether the activity occurs on Federal land or adjacent to it
12 begs the question as to whether the activity should be subject
13 to permit in an effort to protect the National Forest.

14 **CONCLUSION**

15 Here, the Defendant failed and/or refused to obtain the
16 necessary permit although having been advised many times to have
17 one. The Court FINDS the Defendant **guilty** of a violation of 36
18 C.F.R. § 261.10(c) on Counts 1 and 5 and **guilty** of a violation
19 of 36 C.F.R. § 261.3(a) on Count 2. Sentencing shall occur at a
20 time convenient to the parties and set by the Clerk.

21 DATED this 19th day of July, 2012.

22 s/James P. Hutton

23 JAMES P. HUTTON

24 UNITED STATES MAGISTRATE JUDGE